IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 717 of 2004

Usman Ilahibaz Bagwan & ors. .. Appellants

versus

Maruti Narayan Sarawade & ors. .. Respondents

...

Mr.G.S. Godbole for the appellants.

Mr.M.R. Deshpande for respndent no.4.

Mr.S.Y. Sakhare for respndent nos.1 and 2 absent.

Mr.S.K. Mulla for respondent no.3 absent.

CORAM : D.G. KARNIK, J

DATED : 21st December 2006

P.C.:

1. Heard counsel for the appellants. Counsel for the respondents are absent when called.

2. This appeal at the instance of original defendant nos.2 to 7 is directed against the judgement

and order dated 3rd July 2004 passed by Joint Civil Judge, Sr. Division, Solapur directing the appellants to maintain status quo in respect of the suit properties.

3. By agreements of sale dated 25th October 1997 and 15th November 1997 and respondent no.3 agreed to sell the suit property to the respondent nos.1 and 2. Despite the said agreements the respondent no.3 sold eastern half portion of the suit property to the appellants by a sale deed dated 5th October 1999. Respondent nos.1 and 2 thereafter filed a suit bearing Special Civil Suit no.9 of 2004, against the respondent no.3 for specific performance. The respondents also joined appellants being the purchasers, as parties to the suit. In the suit, respondent nos.1 and 2 alleged that they were in possession of the suit property in pursuance of the agreement of sale in their favour and therefore claimed an injunction restraining the respondent no.1 and appellants from disturbing their possession. By the order dated 3rd July 2004, learned Civil Judge, Sr. Division, Solapur directed the parties to maintain status quo. That order is impugned in this appeal.

4. Mr.Godbole, learned counsel for the appellant invited my attention to the reasoning given by the trial

court and submitted that the trial Judge has not given any reasons for the decision. A perusal of the order shows that the entire reasoning is given only in one paragraph which is quoted herein above.

> "It this stage, at the time of argument, it is suggested by the plaintiff Advocate that, the considering the complicated facts and circumstances of respective case of all the parties status quo order may be passed to avoid further complication and multiplication of litigation. On the basis of entire record and consideration of all these facts and circumstances and considering the claim of all the parties against each other, in my opinion, this is the fit case to pass the order of status quo till further order and hence I have pass the following order"

5. It would thus be clear that the learned Judge has not considered the merits at all. He has not considered whether the appellants or the respondent nos.1 and 2 were in possession of the property. He has only observed that

the facts are complicated and therefore it would be proper to pass an order of status quo to avoid further complications and to avoid multiplicity of litigation.

6. Since respondent nos.1 and 2 on one hand and appellants on the other hand claim to be in possession of the property, it was necessary for the trial court to decide who was in possession of the property. Order of injunction or for that matter of status quo could not have been passed without recording atleast a prima facie finding about the possession. Mr.Godbole is right in submitting that the judgement records no reasons for passing of the order of status quo. In the circumstances, appeal deserved to be allowed and is accordingly allowed.

7. Impugned order is set aside and the matter is remanded back to the trial court for hearing it afresh in accordance with law. Considering that the matter is old, the trial Judge shall decide the application for injunction expeditiously.

(D.G. KARNIK, J)